

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PHILIP BAUTISTA,

Plaintiff,

vs.

BANK OF AMERICA, OLD REPUBLIC  
EQUITY CREDIT SERVICES,

## Defendants.

CASE NO. 08CV0685-LAB (LSP)

## **ORDER TO SHOW CAUSE RE: JURISDICTION**

On April 15, 2008, Plaintiff, who is proceeding *pro se*, filed his complaint in this action  
alleging damages for alleged violations of the Fair Debt Collection Practices Act and other  
federal statutes in connection with foreclosure proceedings. This case was initially assigned  
to Judge Napoleon Jones, but following Judge Jones' recusal, it was reassigned to this

22 A summons was issued on April 15, 2008, but no proof of service has been filed<sup>1</sup> nor  
23 have Defendants appeared in this case. Nevertheless, the Court is under a continuing  
24 obligation to examine its own jurisdiction. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231

26       <sup>1</sup> Plaintiff did attach a page identified as a certificate of service showing Plaintiff  
27 mailed a copy of the complaint without the summons to a non-party, Regional Trustee  
28 Services Corporation in Seattle, Washington. (Complaint at 5.) He also attached a blank,  
unsigned Declaration of Service on Bank of America. (*Id.* at 7.) Because Plaintiff filed the  
Complaint before the summons was issued, Plaintiff obviously did not serve a copy of the  
summons and complaint on either Defendant. See Fed. R. Civ. P. 4(c)(1).

1 (1990) ("[F]ederal courts are under an independent obligation to examine their own  
 2 jurisdiction. . . .") (citation omitted).

3 As the party invoking the Court's jurisdiction, Plaintiff bears the burden of showing the  
 4 Court has legal power to act in this case. *Harris v. Provident Life and Accident Ins. Co.*, 26  
 5 F.3d 930, 932 (9th Cir. 1994) (further citation omitted).

6 The Complaint mentions both federal question jurisdiction and diversity jurisdiction.  
 7 While the amount in controversy has been pleaded, citizenship of the parties has not been  
 8 alleged, so only federal question jurisdiction is supported by the pleadings. See 28 U.S.C.  
 9 § 1332(a).

10 The Complaint mentions foreclosure proceedings in another court, possibly San  
 11 Diego County Superior Court. (Complaint, ¶¶ 1–8.) Apparently Plaintiff's property has  
 12 already been sold at auction. (*Id.*, ¶ 7.) Therefore, it is probable proceedings are already  
 13 completed. Under the *Rooker-Feldman* doctrine, federal courts lack jurisdiction to review  
 14 state court judgments. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486  
 15 (1983). Plaintiff may have raised as defenses the same issues he now raises as claims in  
 16 this case. Plaintiff has not explained why this Court has jurisdiction to review the judgment  
 17 of the court in which foreclosure proceedings took place.

18 Even if proceedings were still ongoing, it is likely the Court should abstain until state  
 19 court proceedings are concluded, under the doctrines of *Colorado River Water Conservation*  
 20 *Dist. v. United States*, 424 U.S. 800 (1976) or *Younger v. Harris*, 401 U.S. 37 (1971)  
 21 (extended to certain civil actions by *Middlesex County Ethics Committee v. Garden*, 457 U.S.  
 22 423 (1982)). See *Novak v. Washington Mut. Bank*, FA, 2008 WL 423511, slip op. at \*2  
 23 (N.D.Ohio, Feb. 14, 2008) (holding because foreclosure matters were "of paramount state  
 24 interest," *Younger* abstention was required when foreclosure proceedings were pending in  
 25 state court). Cf. *Rowland v. Novus Fin'l Corp.*, 949 F. Supp. 1447, 1456 (D. Haw. 1996)  
 26 (holding that *Younger* abstention was inappropriate in federal Truth in Lending Act action in  
 27 spite of underlying state court foreclosure action, where federal action did not call state  
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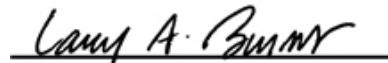
1 action into question). Because Plaintiff has failed to provide information about foreclosure  
2 proceedings in other courts, the Court cannot evaluate the propriety of such an abstention.

3 Plaintiff is therefore **ORDERED TO SHOW CAUSE** why this action should not be  
4 dismissed for failure to invoke the Court's jurisdiction. He may also show cause by  
5 amending the Complaint to show why this Court has jurisdiction. Plaintiff believes  
6 amendment is unnecessary, he may file a memorandum of points and authorities explaining  
7 why this is so. The memorandum must not exceed five pages in length, not counting any  
8 appended or lodged materials. Regardless of whether Plaintiff amends his Complaint or files  
9 a memorandum, he is directed to identify the property at issue and give details of the  
10 foreclosure proceedings, including naming the court, identifying the case, and stating  
11 whether proceedings are ongoing or have been completed.

12 Plaintiff must show cause in one of these two ways no later than **21 calendar days**  
13 **from the date this order is issued.** If Plaintiff fails to show cause as ordered, this  
14 **action will be dismissed without further notice to him.**

15 **IT IS SO ORDERED.**

16 DATED: May 21, 2008

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18 **HONORABLE LARRY ALAN BURNS**  
19 United States District Judge

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